

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.7197 OF 1988

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

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G.S.R.T.C.

VERSUS

SHRI SAMANTSINH H. CHAVDA & ANR.

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Appearance:

MR SM MAZGAONKER for Petitioner

MR HK RATHOD for Respondent No.1

SMT SIDDHI TALATI for Respondent No.2

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Coram: S.K. Keshote,J

Date of decision:01/12/1997

C.A.V. JUDGMENT

#. The petitioner, Gujarat State Road Transport Corporation, by this Special Civil Application,

challenges the validity, legality and correctness of the order of respondent No.2 passed on the application of the petitioner filed under section 33(1) of the Industrial Disputes Act, 1947, and registered as case No.39 of 1987.

#. The respondent No.1-workman is the employee of the petitioner-Corporation and without permission of the Corporation he contested the election of Sarpanch of Gram Panchayat Tarkhanda. He was elected as Sarpanch and has worked as Sarpanch under the false name of Gulabsinh Himatsinh Chavda. A regular departmental enquiry was held against respondent No.1 on the misconduct of contesting election of Sarpanch without permission and the misconduct alleged against him was proved and the Corporation had resolved to dismiss him from the services of the Corporation. As a permission has to be taken under section 33(1) of the Industrial Disputes Act for the same, an application has been filed and simultaneously an order has also been made to pay to the respondent No.1-workman subsistence allowance at the rate of 25% of the salary pending approval. During the pendency of the said application, the petitioner vide its application dated 20th February 1988 prayed the respondent No.2 to decide what amount of suspension allowance should be paid to the workman during the pendency of application under section 33(1) of the Industrial Disputes Act, 1947. The respondent No.2 has rejected the application of the petitioner filed under section 33 of the Act 1947 only on the ground that the respondent-workman has been paid only 25% salary as subsistence allowance which is contrary to the Supreme Court decision. Hence this Special Civil Application before this Court.

#. The learned counsel for the petitioner contended that the order of respondent No.2 to decline to approve dismissal of the respondent No.1-workman only on the ground that 25% of the salary was paid to him as subsistence allowance is wholly arbitrary and unjustified. Mr.S.M.Mazgaonker, learned counsel for the petitioner contended that this Court has held, in the case of Mansinh R.Parmar v. G.S.R.T.C. & Anr., reported in 23(2) GLR 708, that it is competent for the petitioner-Corporation to suspend its employee without wages pending application for permission of its action of dismissal of the employee and in this case more pragmatic view has been taken and despite of the aforesaid decision, order has been passed to pay the respondent-workman 25% of his salary as subsistence allowance. The Hon'ble Supreme Court decision is later in point of time and as such the Tribunal should not have

rejected the application of the petitioner only on this ground. It has next been contended that the petitioner itself has moved an application before the authority on 20th February 1988 to take its guideline as to the amount of subsistence allowance to be paid to the workman but no such decision has been taken. Lastly, Mr.Mazgaonker urged that it was a case of serious misconduct and the respondent-workman has not disputed that he contested the election without permission and worked as Sarpanch. On this ground alone, permission should not have been declined. At the most the respondent No.2 could have passed the order of giving balance of subsistence allowance to the workman.

#. On the other hand, Mr.H.K.Rathod, learned counsel for respondent-workman contended that the authority has not committed any illegality in declining the grant of permission as prayed for by the Corporation for dismissal of the workman. The learned counsel for the respondent-workman admitted that the workman had contested election of Gram Panchayat aforesaid without permission and he worked as Sarpanch. The learned counsel for workman further did not dispute that the respondent-workman contested the election of Sarpanch without taking any prior permission of the petitioner-Corporation.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The respondent-workman being an employee of the Corporation was duty bound to see that he do not commit any misconduct. He had to faithfully and with all sincerity, follow the discipline and conduct rules. If he wanted to contest election of Sarpanch, nobody could have come in his way but he could have done so only after he has been granted permission by the Corporation, if there is any provision for grant of permission for contesting election or after resigning from the services of the Corporation. What the respondent-workman precisely did is to conceal all the facts and as such, as contended by petitioner's counsel, in a fake name he contested the elections. So on his being elected as Sarpanch, he continued to work as Sarpanch as well as took benefit of his services as an employee of the Corporation. The respondent-workman who opted to contest election for the post of Sarpanch, a people's representative, should have exhibited himself as a person above all these mischiefs, dishonesty and unfair approach. Being people's representative, his character should have been above all suspicion as well as should

have been absolutely an honest person. Contrary to it, what the respondent-workman did is that he took benefit of his services by concealing the fact from the petitioner. If that is the conduct of the respondent-workman, then how far on this technical ground permission could have been declined. It is true that in view of the later decision of Hon'ble Supreme Court, the workman should have been paid subsistence allowance as per the decision, but even if there is some shortfall in the amount of subsistence allowance, the short question that arise for consideration is whether permission should have been declined by respondent No.2 in the case of an employee, the respondent-workman herein who has committed a fraud not only with the petitioner but with the people by contesting election in the fake name, as contended by petitioner's counsel. However, so far as that part is concerned, i.e. whether the workman contested the election in a fake name or not is not the subject matter of dispute herein but it is admitted case of respondent-workman that he contested the election of Sarpanch, he was elected as Sarpanch and he worked as Sarpanch without permission of the petitioner and without submitting resignation, and as such, it is a serious misconduct and on such misconduct found proved, the person like the respondent-workman should have been ordered to be removed or dismissed from services. Permission was to be taken is a different matter, but when these facts are admitted, then on this technical ground, if the permission is denied then the persons of such category will get encouragement. What this Court will do further if the order of the authority is maintained, is to encourage the employees to be indisciplined, to commit fraud with their employer as well as with people, who repose confidence in such persons to be their elected member. These technicalities in such matters should be taken care of but should not be given effect to that extent of declining permission, moreso when whatever amount of shortfall could have been ordered to be paid to the respondent-workman. Law has to be applied to the facts of each case and where the application of law seems to be dangerous to public at large and which encourages misconduct, indiscipline, dishonesty and an attempt to defraud the employer etc., the proper course would have been adopted to do justice to the people, moreso when whatever infirmity or lapse or deficit on the part of the employer could have been compensated to the workman by ordering the difference of subsistence allowance to be paid and what it has been paid. To adopt such a course would not have caused any prejudice to the respondent and contrary to it to take converse decision would have been contrary to the public

interest. The case of dismissal of respondent No.1 cannot be equated with other cases of dismissal which were under consideration before the Hon'ble Supreme Court. Moreover, there is no dispute that as per the law laid down by this Court, the petitioner was not required to pay any subsistence allowance. But still it has acted fairly and 25% amount was paid as subsistence allowance. If the Hon'ble Supreme Court's decision has come otherwise, then too, in the facts of this case whether it would have been taken to be a case to the extent of declining the permission to the petitioner to dismiss the respondent No.1 from services who had committed such a serious and grave misconduct is a matter to be considered with reference to service and public. Taking into consideration the totality of the facts of this case, this Court will not permit a person of the character of respondent No.1 to continue in services on this technical ground alone. In the result, this Special Civil Application succeeds and the same is allowed. The order of respondent No.2 dated Nil passed in Case No.39 of 1987 is quashed and set aside and the permission as prayed for by the petitioner for dismissing the respondent-workman is granted. However, the petitioner is directed to pay to the respondent-workman, difference of subsistence allowance to be paid to him and what has been already paid, within a period of three months from the date of receipt of certified copy of this order. Rule made absolute in aforesaid terms with no order as to costs.

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(sunil)